IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.K.MOHANAN

MONDAY, THE 12TH NOVEMBER, 2007 / 21ST KARTHIKA, 1929

Crl.MC.No. 164 of 2004 (A)

(FIR NO.390/2003 OF JUDICIAL FIRST CLASS MAGISTRATE COURT, ALATHUR)

PETITIONER/ACCUSED:

K.NARAYANAN, S/O. KUMARAN,
AGED 62 YEARS, RIFA HOUSE, BEHIND CHITHRANJALI THEATRE, PAZHAMBALAKKODU, PALAKKAD DISTRICT.

BY ADV. SMT.JEENA JOSEPH
SRI.G.D.PANICKER

RESPONDENTS/RESPONDENTS/STATE:

1. D.A.SHAHIDA, D/O. ABU, AGED 39 YEARS, KALIYATTUPARAMBIL, KASABA, CALICUT.

2. STATE OF KERALA, REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.KAMAPPU
BY ADV. SRI.JACOB ABRAHAM

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 12/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V.K.MOHANAN, J.

Crl.M.C.No. 164 of 2004 - A

Dated this the 12th day of November, 2007

O R D E R

This Crl.M.C. is filed with a prayer to quash Annexure-A1 F.I.R. registered in the Alathur Police Station as F.I.R.No.390 of 2003 for the offence under Section 498 (A) of the Indian Penal Code against the petitioner who is the sole accused in the above crime. Crime No.390 of 2003 of Alathur Police Station was registered on 31.12.2003 on the basis of the information furnished by the first respondent against the petitioner. According to the first respondent, the petitioner married the first respondent on 23.2.2003 and thereafter, she was residing along with the respondents in his house. Thereafter, according to the defacto complainant, after two months, the petitioner had taken all her gold ornaments and he had started demanding more money and abused her. It is the specific case of the defacto complainant that on 28.8.2003, the defacto complainant went to her house and thereafter, she lived with him in his residence. Along with the M.C.,

the petitioner herein has produced Annexure A2 reply notice in which the petitioner has denied that the first respondent is a legally wedded wife of the petitioner. Thus, according to the petitioner, there is no legal marriage between the petitioner and the first respondent and therefore, no offence under Section 498 (A) of the Indian Penal Code will lie against the petitioner and if the petitioner is permitted to undergo the ordeal of trial, it will amount to abuse of process of the court and hence the F.I.R. is to be quashed.

2. I have heard the learned counsel for the petitioner as also the learned counsel for the first respondent.

3. Smt.Jeena Joseph, counsel appearing for the petitioner strenuously argued that there is no evidence of marriage between the petitioner and the first respondent. Counsel submits that the petitioner belongs to Hindu community whereas the first respondent is a Muslim. Thus, on the basis of the above religious status, the counsel submits that there is no valid marriage

between the petitioner and the first respondent. Learned counsel further submits that as pointed out in Annexure-II reply notice, the petitioner has no previous acquaintance with the first respondent and when he was admitted in an Ayurveda Hospital, there is nothing more than mere acquaintance. Thus, according to counsel for the petitioner, there is no valid marriage. If there is no valid marriage, no offence under Section 498 (A) of the Indian Penal Code will lie against the petitioner.

4. Opposing the above contention, the learned counsel appearing for the first respondent submits that though the petitioner as well as the second respondent are belonging to different religions, they were residing as husband and wife and there was valid marriage also. It is also pointed out that on the basis of the F.I.R, the police proceeded with the investigation which culminated in filing a final report and the court took cognizance of the final report and trial was commenced and now more than two witnesses were already

examined and therefore, this Court may not interfere at this stage.

5. Sri.Jacob Abraham, counsel for the first respondent has brought to my notice a decision of this Court reported in **Aravindan** v. **State of Kerala** (2005 (3) KLT 157) and submitted that for the purpose of Section 498 (A) of the I.P.C., the question to be considered is whether there is a husband and wife relationship and the same may be arrived at on the basis of the materials that being adduced at the time of trial. According to counsel, now the Police has filed a final report against the petitioner and trial has already been commenced. In the light of the fact that the Police has already completed the investigation and filed a final report on the basis of which the trial court took cognizance and the trial had proceeded to certain extent, it is not proper in interfering with the dispute in exercise of the jurisdiction of this Court under Section 482 of the Code of Criminal Procedure. The contentions raised by the petitioner and also the rival contentions

raised from the part of the respondents are having far reaching consequences and any finding on those pleadings is likely to affect adversely either of the parties during trial of the case. Therefore, according to me, this Court shall not interfere at this stage. In the light of the above facts and circumstances of the case, the Crl.M.C. deserves no consideration and the same is dismissed.

V.K.MOHANAN,
Judge

Mbs/

V.K.MOHANAN, J.

O.P.NO. OF 2001

J U D G M E N T

DATED: -0-2007